CF0000057399

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

MISC. CRI. CASE No. 2422 /89

Criminal Appeal No. 1209 /89

Single Bench (Criminal)

APPELLANT : State of M.P.

-Vs-

RESPONDENT : Gaffar Bhai S/o Dada Bhai aged 38 years Occupation Merchant Distt. Bastar.

APPLICATION FOR GRANT OF LEAVE TO FILE APPEAL U/S 378(iii) Cr. P.C. AND CRIMINAL APPEAL U/S 378(i) Cr.P.C. 1973 AGAINST ACQUITTAL.

OFFENCE U/S 7/16 of PREVENTION OF ~~XXXXXXXXXXXXXXXX~~ FOOD ADULTERATION ACT.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

01.03.2007

Shri Arun Sao, Govt. Advocate for the State/appellant.

Dr. N.K. Shukla, Sr. Advocate with A.K. Yadav, counsel for the respondent/accused.

Arguments heard.

Judgment passed as follows :

ORAL JUDGMENT
(01.03.2007)

SUNIL KUMAR SINHA, J.

Being aggrieved with the judgment of acquittal dated 4/7/88, passed in Criminal Case No.122/86 by the Additional Chief Judicial Magistrate, District – Kanker, Camp at Naryanpur, the State had preferred an application for grant of leave to file an appeal under Section 378 (iii) of the Code of Criminal Procedure, in which, the leave was granted by the High Court vide order dated 13/2/1989 and the matter was registered as Criminal Appeal No.1209/1989, which is being disposed of by this judgment.

The brief facts are that the in village – Aamabeda, P.S. Ambagarh Chowki, District – Bastar, the accused/respondnet was having a grocery shop. The Food Inspector namely Gangasharan Gupta (PW-1) visited the shop of the respondent on 02/12/1985 and asked about licence etc. of the said shop. The respondent told to him that his licence was up to date and the same has been

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deposited for renewal with the concerned authority. The Food Inspector saw that certain packets of biscuits are also kept in the shop for sale. He gave a notice to the respondent and purchased 6 packets of biscuits after paying Rs.18/- for the same. After purchasing the sample, he divided the packets into 3 parts and sealed the same and prepared *Panchnama* of the aforesaid proceedings. One packet of sample was sent for analysis to the Public Analyst, from where the report (Ex.P/7) was received. According to the said report, sample was found to be adulterated. Thereafter, the accused/respondent was served with notice under Section 13 (2) of the Prevention of Food Adulteration Act, 1954 and after completion of the other formalities and enquiry in this regard, charge sheet was filed before the concerned Court under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act". The charges were framed and explained to the accused/respondent. The charges were also framed under Section 7 read with 16 (1) (A) (1) of the aforesaid Act on 03/08/1987, which were denied by the accused/respondent and the trial commenced.

During the course of trial, the prosecution examined only 2 witnesses. Thereafter, accused/respondent was examined under Section 313 Cr.P.C., who denied the material appearing against him and stated that he had purchased the aforesaid articles from the shop of Mohd. Iqbal in sealed condition and he has not made any adulteration in the same.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The learned Magistrate, after hearing the arguments of the respective parties acquitted the accused/respondent of the said charges by passing the impugned judgment dated 04/7/88. It is against this judgment of acquittal; the State has preferred this appeal.

Learned counsel for the State argues that the view taken by the Magistrate that the articles were the sealed articles and the respondent was not responsible for any adulteration found in the same, as he has purchased those articles in sealed condition from a dealer and was entitled to benefit of Section 19(2) of the aforesaid Act, is not in accordance with law and the judgment should be set aside.

On the other hand, learned counsel for the respondent submits that the article was the sealed article and the *Panchnama* (Ex.P/3) of the day would show that a warranty was printed on the article with all the particulars of the contents of the article on each packet of the biscuits, therefore, the Magistrate has rightly taken this view that the respondent was not responsible for any adulteration found in the said articles and the acquittal was just and appropriate.

I have heard learned counsel for the parties at length and have also perused the records of the criminal case.

The purchase of sample of articles is not disputed in this case. Moreover it comes in the evidence of P.W.-1 i.e. Gangasharan Gupta that in the year 1980 he was working as a Food Inspector in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jagdalpur and the entire area of District -Bastar was under his jurisdiction. This village Aamabeda also falls in the same district. On 2.12.85, he had gone to the shop of the respondent and had purchased the aforesaid biscuits after giving him notice under Ex.P-1. He had paid price of the biscuits in sum of Rs. 18/- and the receipt was given to him under Ex.P/2. He has admitted in para 6 that he had prepared the Panchnama (Ex.P/3) regarding the said purchase and thereafter, he has divided the purchased sample into three parts and after sealing those articles in the manner prescribed, he had sent first part of the article to the Public Analyst, Bhopal along with Form No.7 and the other two sealed parts were deposited with the Local Health Officer, Jagdalpur under Ex.P-6. The report of the Public Analyst was received under Ex.P-7. He has admitted vide para 13 that a letter was received from Mohd. Iqbal under Ex.P/11, according to which, he had denied to sell the biscuits to the respondent. He had also recorded the statement of Mohd. Iqbal under Ex.P/12 which bears his own signature and also the signature of the said person. He has further stated that under Ex.P-14, he had sent information to the accused/ respondent under Section 13 (2) of the Act regarding the Public Analyst report. In the cross examination, he has admitted that he has not made Mohd. Iqbal an accused in this case. He has further stated that since the accused/respondent could not submit any purchase bill of the said article, he had not given any notice to Dinesh Brand Company under Form No.6. He also stated that in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the later stage of the enquiry also, the accused/respondent has not produced any bill of the said purchase.

The contents of the *Panchnama* (Ex.P-3) would show that the Food Inspector (P.W.-1) has written in *Panchnama* that it was endorsed on the packets of the said biscuits like :

> "M.F.G.S., Simco Food Products – KUMHARI – 490042" and a slip was also there containing that "mini glucose net weight when packed 350 gms/300 gms/ preparation number, Date and month/Max. RPL T Extra Rs.4.50/-".

Admittedly the seized articles were packed articles and the accused was not the manufacturer of the said articles. According to the prosecution itself he was a vendor.

Section 19 of the Act provides for the defence which may or may not be allowed in prosecutions under this Act. Sub-section (1) provides that it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for anlaysis was not prejudiced by the sale. Sub-section (2) provides that a vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves –

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in is possession was properly stored and that he sold it in the same state as he purchased it.

Sub-Section (3) provides that any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

An impediment is there in Section 14 of the Act against the manufacturers, distributors and dealers to give warranty. It has been provided that no [manufacturer or distributor of, or dealer in,] any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.

A proviso has been added to this Section that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this Section.

An explanation has further been added to this Section, which says that in this Section, in sub-section (2) of Section 19 and in section 20-A, the expression "distributor" shall include a commission agent.

In this manner, it is apparent that in the case on hand, the Food Inspector, even after knowing the name and address of the manufacturer, who had printed such information under the obligation of warranty on the sealed packets of the biscuits, had not made any effort to make the manufacturer an accused in this case and the charge sheet was filed in superficial manner before the Court. The accused/respondent was a vendor having a small grocery shop in the village, who was having possession of such article had clearly stated to the Food Inspector (PW-1) that he had purchased the article from a particular person and the articles were branded and sufficient description was there under the obligation of warranty on the sealed packet of those articles and in this situation, it was incumbent upon the Food Inspector to make enquiry in this regard and to prosecute the manufacturer of the article, by whom, the articles were manufactured as the manufacturer had printed the contents of the article and description under the obligation of warranty.

It is in these facts and circumstances, trial Court has acquitted the accused of the charges framed under Section 7 read

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	with 16 (1) (A) (1) of the Act and in the opinion of this Court, no illegality, irregularity or infirmity is there in the judgment of the trial court warranting interference in this appeal. The appeal filed by the State has no merit and the same is dismissed. The judgment of acquittal recorded by the trial Court is hereby confirmed. **Sd/-** **SUNIL KUMAR SINHA** **Judge**	

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